Supreme Court, U.S.
F I L E D
JAN 23 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-744

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

STATE OF MAINE,
Petitioner

V.

JAY G. THIBODEAU,
Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

REPLY BRIEF FOR PETITIONER

JAMES E. TIERNEY
Attorney General

JAMES T. KILBRETH III
Deputy Attorney General

WAYNE S. MOSS
Assistant Attorney General
Criminal Division
Appellate Section
State House Station 6
Augusta, Maine 04333
(207) 289-3661
Counsel of Record for
Petitioner

BEST AVAILABLE COPY

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES.....i

REASON FOR GRANTING THE WRIT.....1

A MAJORITY OF THE MAINE SUPREME JUDICIAL COURT HAS DECIDED THE ISSUE OF WHETHER RESPONDENT WAS "IN CUSTODY" UNDER MIRANDA IN A WAY THAT DIRECTLY CONFLICTS WITH THIS COURT'S DECISIONS IN BERKEMER V. McCARTY, CALIFORNIA V. BEHELER, OREGON V. MATHIASON, AND BECKWITH V. UNITED STATES.....1

CONCLUSION.....9

CERTIFICATE OF SERVICE.....10

TABLE OF AUTHORITIES

CASES	PAGE(S)
Beckwith v. United States, 425 U.S. 341 (1976)	1,3,5,8
Berkemer v. McCarty, 104 S.Ct. 3138 (1984)	3,4,5,6,7,8
California v. Beheler, 463 U.S. 1121 (1983)	1,2,4,5,6,7,8
Miranda v. Arizona, 384 U.S. 436 (1966)	1,2,4,
Oregon v. Mathiason, 429 U.S. 492 (1977)	1,2,4,5,6,7,8

REASON FOR GRANTING THE WRIT

A MAJORITY OF THE MAINE SUPREME JUDICIAL COURT HAS DECIDED THE ISSUE OF WHETHER RESPONDENT WAS "IN CUSTODY" UNDER MIRANDA IN A WAY THAT DIRECTLY CONFLICTS WITH THIS COURT'S DECISIONS IN BERKEMER V. McCARTY, CALIFORNIA V. BEHELER, OREGON V. MATHIASON, AND BECKWITH V. UNITED STATES.

Contending that he was "in custody" under Miranda v. Arizona, 384 U.S. 436 (1966), Respondent seeks to distinguish his case factually from California v. Beheler, 463 U.S. 1121 (1983), Oregon v. Mathiason, 429 U.S. 492 (1977), and Beckwith v. United States, 425 U.S. 341 (1976), primarily on the grounds that 1) the police did not inform Respondent that he was not under arrest nor ask him if he wished to take a break or return home, and 2) Respondent's interview with the police on the afternoon

of October 28, 1983, lasted approximately ninety minutes. This Court has already ruled, however, that Respondent's first ground does not constitute a legal justification for finding custody. Nor does Respondent's second ground distinguish his case from Beheler and Mathiason. Moreover, under the totality of the circumstances of this case (Beheler, 463 U.S. at 1125), Respondent's two grounds do not in any way support the conclusion that Respondent was in custody for purposes of Miranda.

With respect to Respondent's first ground, the fact that the police in both Beheler, 463 U.S. at 1122, and Mathiason, 429 U.S. at 493, told the defendant in each one of those cases that he was not under arrest, and that Beckwith was advised of his right to remain silent and his right to

an attorney (Beckwith, 425 U.S. at 343-44), was not the dispositive factor but only one consideration in the totality of the circumstances of those cases that led the Court to find no custody. Moreover, Berkemer v. McCarty, 104 S.Ct. 3138 (1984), directly refutes Respondent's suggestion that a person confronted by the police is in custody if the police simply fail to advise him that he is free to leave. Indeed, in Berkemer, the defendant was subjected to a Fourth Amendment seizure, viz., a traffic stop where the defendant was not free to leave the scene because the police had decided he would be placed under arrest. Berkemer, 104 S.Ct. at 3142, 3152. Yet, this Court held that the traffic stop - a situation where a person is detained and questioned by the police and therefore not advised of his freedom to

leave - does not constitute custody for purposes of Miranda. Berkemer, 104 S.Ct. at 3148-52.

In regard to Respondent's second ground, Respondent's approximately ninety-minute interview with the police consisted of a roughly thirty-minute stop in which Respondent explained and was questioned about his route the day before and a one-hour drive in which Respondent retraced with the police his alleged route. The initial thirty-minute stop corresponds in length to the thirty-minute interviews in Beheler, 463 U.S. at 1122, and Mathiason, 429 U.S. at 495. The subsequent drive took as long as one hour because of the complicated route Thibodeau had outlined during the stop. App. A at 7-8, 18, 20; App. A at 38-43, 46-47 (Wathen, J., dissenting). As in Beheler

and Mathiason, Respondent was free to return home at the conclusion of his interview with the police. Given these circumstances, Respondent's case is similar to, not distinguishable from, Beheler and Mathiason.[1]

---

[1] Respondent also emphasizes that he was the "focus" of the police investigation and that the police, having isolated Respondent in the police cruiser from his parents, interviewed him in a "coercive setting." Resp. Br. in Op. at 3-6. As pointed out in the State's petition, however, Berkemer, Beheler, Mathiason, and Beckwith establish that these factors, which were also present in those cases, do not either in themselves or under the totality of the circumstances of this case give rise to a custodial situation. Pet. at 13-25. Indeed, Respondent's isolation from his parents in the back seat of the two-door police cruiser corresponds to the isolation of the defendant in Mathiason who was interviewed behind a closed door in an office inside a police station. Mathiason, 429 U.S. at 493. Yet, the Mathiason Court found no custody in a per curiam decision.

Moreover, considered in view of the totality of the circumstances in this case, Respondent's two grounds do not mean that he was in custody, i.e., arrested or restrained in his freedom of movement to the degree associated with a formal arrest. Berkemer, 104 S.Ct. at 3151; Beheler, 463 U.S. at 1125; Mathiason, 429 U.S. at 495. Here the police asked Respondent to accompany them on a specific mission - viz., to show the police the route he claimed to have taken on the day in question. Respondent agreed to go. S.H.T. at 23, 52. Hence, from the outset, Respondent, and a reasonable man in Respondent's position (Berkemer, 104 S.Ct. at 3152), would have understood this police encounter to be temporary - its length to be governed by the amount of time it would take Respondent to explain his alleged

route and to retrace that route with the police. Cf. Berkemer, 104 S.Ct. at 3149-50, 3152 (one reason why ordinary traffic stop does not constitute custody is because of its temporary nature). The fact that this encounter lasted one hour more than the thirty-minute interviews in Beheler and Mathiason does not thereby convert Respondent's temporary interaction with the police into an arrest or a restraint on freedom of movement analogous to a formal arrest.

The police encounter was not any more of a custodial situation simply because the police omitted to advise Respondent that he was not under arrest and was free to leave. The police did not employ threats, promises, or physical contact in asking Respondent to show them his alleged route. S.H.T. at 51, 123. Moreover, Respondent's

purpose in accompanying the officers was to lead them astray. S.H.T. at 123; App. A at 37, 46-47 (Wathen, J., dissenting); Thibodeau, 496 A.2d at 643, 645 (Wathen, J., dissenting). Since the police and Respondent were busy for the ensuing ninety minutes in their joint purpose of discussing and retracing Respondent's alleged route, the absence of any police warnings that Respondent was free to leave did not in any way add any pressure or compulsion to Respondent's situation.

For these reasons, Respondent was not in custody; and the Maine Supreme Judicial Court's majority decision to the contrary directly conflicts with Berkemer, Beheler, Mathiason, and Beckwith and should be reversed.

CONCLUSION

The State of Maine's petition for a writ of certiorari to the Maine Supreme Judicial Court should be granted; and the judgment and opinion of the Maine Supreme Judicial Court in State of Maine v. Jay G. Thibodeau, 496 A.2d 635 (Me. 1985), should be summarily reversed or, alternatively, subjected to plenary review by this Court.

Respectfully submitted,

JAMES E. TIERNEY
Attorney General

JAMES T. KILBRETH III
Deputy Attorney General

WAYNE S. MOSS
Assistant Attorney General
Criminal Division
Appellate Section
State House Station 6
Augusta, Maine 04333
(207) 289-3661
Counsel of Record for
Petitioner

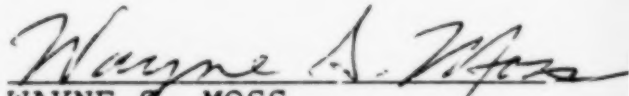
Dated: January 21, 1986

CERTIFICATE OF SERVICE

I, Wayne S. Moss, Assistant Attorney General, hereby certify that pursuant to U.S. Sup. Ct. Rule 28.3 I have caused three (3) copies of the foregoing "Reply Brief for Petitioner" to be served on the only other party to this proceeding by depositing said copies in the United States Mail, postage prepaid, addressed to Respondent's Counsel of Record, Jeffrey L. Hjelm, Esquire, as follows:

Jeffrey L. Hjelm, Esquire
VAFIADES, BROUNTAS & KOMINSKY
One Merchants Plaza
P. O. Box 919
Bangor, Maine 04401

Dated at Augusta, Maine, this 21st day of January, 1986.



WAYNE S. MOSS
Assistant Attorney General
State House Station 6
Augusta, Maine 04333
(207) 289-3661
Counsel of Record for
Petitioner